

BOARD OF ENVIRONMENTAL REVIEW
AGENDA ITEM
EXECUTIVE SUMMARY FOR
ACTION ON RULE INITIATION FOR MONTANA MAJOR FACILITY SITING ACT

AGENDA #III.B.3.

AGENDA ITEM SUMMARY: The Department asks the Board to:

- A. Initiate a rule making process to update rules implementing the Montana Major Facility Siting Act (MFSA),
- B. Direct the Department to issue notice of proposed rules, and
- C. Appoint a Hearing Officer.

LIST OF AFFECTED RULES:

Rules proposed for amendment

ARM 17.20.201, 17.20.202, 17.20.207, 17.20.301, 17.20.602, 17.20.603, 17.20.606, 17.20.607, 17.20.804, 17.20.807, 17.20.815, 17.20.818, 17.20.901, 17.20.907, 17.20.920 through 17.20.924, 17.20.928, 17.20.929, 17.20.1301, 17.20.1302, 17.20.1304, 17.20.1305, 17.20.1311, 17.20.1426, 17.20.1604, 17.20.1606, 17.20.1607, 17.20.1803, 17.20.1804, 17.20.1901, and 17.20.1902.

Rules proposed for repeal

ARM 17.20.1427 through 17.20.1431, 17.20.1434 through 17.20.1440, and 17.20.1444 through 17.20.1447.

AFFECTED PARTIES SUMMARY: The proposed changes would affect the general public living near potential linear facilities, persons planning to construct linear facilities, and persons planning exploration programs for geothermal energy sources.

The mailing will be completed by September 17, 2004.

SCOPE OF PROPOSED PROCEEDING: This rule making effort generally involves:

- Repealing Title 17, Chapter 20, Rules 1427 through 1431, 1434 through 1440, and 1444 through 1447 pertaining to linear facilities because requirements of these sections would be transferred to a new circular, Circular MFSA-2, and streamlined and updated with the proposed transfer.
- Amending and updating ARM Title 17, Chapter 20, Rules 201, 202, 207 pertaining to geothermal exploration; 301 addressing definitions; 602, 603, 606, and 607 addressing waivers; 804, 807, 815, and 818 pertaining to application requirements for linear facilities; 901, 907, 920 through 924, 928, and 929 addressing need; 1301, 1302, 1304, 1305, and 1311 discussing alternatives; 1426 addressing general requirements of the alternative siting study; 1604, 1606, 1607 updating decision standards; 1803 and 1804 pertaining to amendments; and 1901 and 1902 addressing monitoring.
- Existing rules would be updated to implement legislative changes to MFSA and generally updated based on department experience gained in administering the rules.

BACKGROUND: Administrative rules implementing MFSA as they pertain to linear facilities, geothermal exploration, waivers, and monitoring have not undergone a major update since 1985. Due to the large amount of interest in construction of new electric transmission lines, the Department is proposing that the Board update the rules pertaining to linear facilities to remove several sections of the rules that are no longer authorized by law due to changes in MFSA over a number of years.

The Department also proposes that the Board amend rules to transfer requirements for an applicant's alternative siting study and baseline study from existing rules a new circular, Circular MFSA-2. This transfer would be similar to the rule effort undertaken in 2001 for generation facilities that moved requirements for an applicant's baseline study to Circular MFSA-1. The circular format would reduce administrative costs associated with printing rules and would present these requirements to applicants in a more readable format. Streamlining and updating of application requirements for the alternative siting study and baseline study are also proposed as part of this transfer.

Rules pertaining to need for a linear facility would be updated to recognize studies that would be undertaken by Regional Transmission Organizations (RTOs) created under Order 2000 of the Federal Energy Regulatory Commission. Rules pertaining to need would also be updated based on legislative changes.

Rules pertaining to geothermal exploration would be updated to reflect legislative changes. Revised language pertaining to confidentiality is proposed to better reflect current statutes.

Finally, rules that pertain to amendments and post-certification monitoring are proposed to be updated based on legislative changes and experience the Department has gained from certification of facilities since 1985.

HEARING INFORMATION: The Hearing Officer will have to schedule a hearing.

BOARD OPTIONS: Proceed with rule making, defer rule making, decide that new rules are not needed and not initiate rule making.

DEQ RECOMMENDATION: The Department recommends that the Board:

- A. Initiate rule making process to update rules implementing the Montana Major Facility Siting Act (MFSA),
- B. Direct the Department to issue notice of proposed rules, and
- C. Appoint a Hearing Officer.

ENCLOSURES

- 1. Draft notice of proposed rulemaking
- 2. Draft Department Circular MFSA-1
- 3. Justifications for Department Circular MFSA-1